

Chapter 15

Certificate of Rehabilitation Regulation

Regulation # R400-4:GC-15

Chapter 15 Certificate of Rehabilitation Regulation

Section 1. Purpose; Authority

1-1. *Purpose.* It is the purpose of this Chapter to:

- a. Define the standards and processes to those Tribal members seeking licensure and employment with a gaming enterprise who have a Specific Disqualifying Circumstances that would otherwise disqualify them for licensure.
- b. Define standards and processes for the Gaming Commission in making determinations on the granting of a Certificate of Rehabilitation to the prospective Tribal members in accordance with applicable Federal, State, and Tribal laws; and
- c. Assist the gaming enterprise and recipients of a Certificate of Rehabilitation to understand the process that Tribal law imposes upon persons granted a Certificate of Rehabilitation in order to obtain a license to be employed by a gaming enterprise.

1-2. *Authority.* These rules and regulations are issued under and pursuant to the authority of the Gaming Ordinance #10-400-01, the Rehabilitation for Licensure Ordinance #11-400-10, the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Tribal-State Gaming Compact (73 Fed. Reg. 21361, April; 21, 2008), the Gaming Commission Ordinance #04-400-04, and the Commissions Ordinance #04-105-01.

Section 2. Definitions

2-1. *General.* For purposes of this regulation, certain terms are defined in this section. The word “shall” is always mandatory and not merely advisory. Unless defined elsewhere, terms defined in this Chapter, the Gaming Ordinance, the Rehabilitation for Licensure Ordinance and Gaming Commission Ordinance are defined for the purposes of all Gaming Commission regulations.

2-2. *Applicant* means a Tribal member eligible to receive a Certificate of Rehabilitation for licensure from the Gaming Commission which will enable the person to be employed with or contracted by a gaming enterprise. “Applicant” also encompasses re-applicants.

2-3. *Gaming Commission Agents* means officials (Gaming Commissioners) or employees of the Gaming Commission, including the Director, Compliance personnel, Surveillance personnel, Internal Audit personnel, the Background Investigator and administrative staff of the Gaming Commission.

2-4. *Compact* shall mean a Tribal-State Compact concerning Class III gaming approved or deemed approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. §2710(d).

2-10. *Gaming Enterprise* shall mean any commercial enterprise of the Tribe authorized to engage in gaming, and all ancillary commercial activities within the gaming (facility(ies) and other improvements constructed for the conduct of gaming

2-15. *License* shall mean any official and revocable authorization granted for a limited period of time by the Gaming Commission pursuant to the Gaming Ordinance to an applicant to conduct employment in any gaming facility.

2-16. *National Indian Gaming Commission* shall mean the Commission established pursuant to IGRA.

2-20. *Regulatory Agency* shall mean the Little River Band of Ottawa Indians Gaming Commission, created by Gaming Commission Ordinance #04-400-04, or such other Gaming regulatory body created by Ordinance.

2-21. *Rehabilitation* shall mean the exclusion of the effect of a specific set of facts and circumstances that form the basis of a Specific Disqualifying Circumstance.

2-22. *Specific Disqualifying Circumstance* shall mean those circumstances, as defined in the Gaming Ordinance and the Rehabilitation for Licensure Ordinance, which determine that an applicant is ineligible for licensure as an employee of a gaming enterprise.

2-23. *Tribal Court* shall mean the Tribal Court and Tribal Court of Appeals of the Little River Band of Ottawa Indians and all other tribal judicial forums now or hereinafter established by the Tribe.

2-24. *Tribe* shall mean the Little River Band of Ottawa Indians.

2-25. *Tribal Member* shall mean an individual enrolled in the Little River Band of Ottawa Indians.

Section 3. Construction and Application of the Rules

3-1. Construction and Amendments.

a. These rules shall be liberally construed to permit the Gaming Commission to effectively carry out its statutory functions and secure a just and expeditious determination of issues properly presented to the Gaming Commission.

b. These rules may be amended by the Gaming Commission from time to time in accordance with the provisions of the Gaming Ordinance, the Gaming Commission Ordinance, the Rehabilitation for Licensure Ordinance and any regulation promulgated by the Gaming Commission.

3-2. Severability, Preemption, Adoption and Repealer.

a. If any clause, sentence, subparagraph, paragraph, subsection, section, chapter or other portion of these rules or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these rules or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, chapter or other portion thereof directly involved in such holding or to the person or circumstances therein involved.

b. The Gaming Commission shall have jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of the Gaming Ordinance, Gaming Commission Ordinance, Rehabilitation for Licensure Ordinance and these rules.

d. This regulation is adopted pursuant to Gaming Commission resolution #GC11-0614-13 and approved by Tribal Council resolution #11-0615-223.

e. This regulation shall be effective upon the effective date of June 15, 2011.

Section 4. General Rights and Duties of Applicants.

5-1. *No Promise of Employment.* The granting of a Certificate of Rehabilitation by the Gaming Commission does not constitute a commitment on behalf of the Gaming Commission or any other party to hire or continue to employ the licensee.

5-2. *Irrevocability.* Once a Certificate of Rehabilitation has been granted with respect to a Specific Disqualifying Circumstance, it cannot be revoked or nullified by any action of the Gaming Commission and must be respected in all licensure proceedings by the Gaming Commission.

5-3. *Reservation of Rights.* No provisions of the Rehabilitation for Licensure Ordinance shall abrogate any right to appeal a licensure decision of the Gaming Ordinance, nor subrogate any

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proceedings under the licensing provisions of the Gaming Ordinance.

5-4. *Limitations of Rehabilitation.* Rehabilitation shall be granted only for the purpose of licensure by the Gaming Commission and the Tribal member remains subject to all provisions of the Gaming Ordinance without any prejudice or bias arising from that grant of rehabilitation.

5-5. *Rehabilitation Barred.* The Gaming Commission shall not grant a Certificate of Rehabilitation where the underlying basis for the Specific Disqualifying Circumstance(s) is based on conduct demonstrating habitual offender status, such that, within the relevant look-back period, there are two prior Certificates of Rehabilitation granted for the same underlying basis of the current Specific Disqualifying Circumstance.

5-6. *Denial of Rehabilitation.* If the Gaming Commission fails to grant rehabilitation it shall set forth, in writing, its findings and reasoning in determining against the rehabilitation for the Specific Disqualifying Circumstance(s) in a Notice of Denial of Rehabilitation that shall be delivered to the Tribal Member in writing, with notice of the right to a Rehabilitation hearing, no later than seven (7) days after the date of its determination.

5-7. *Effect of Rehabilitation.* Rehabilitation shall have the effect of exempting a finding of a Specific Disqualifying Circumstance from consideration by the Gaming Commission in the course of its normal licensing procedures pursuant to the provisions of the Gaming Ordinance.

Section 6. Standards for Certificate of Rehabilitation Eligibility.

6-1. An applicant for a Non-Gaming Employee license with a Specific Disqualifying Circumstance may be approved for licensure upon the issuance of a Certificate of Rehabilitation by the Gaming Commission.

b. *Specific Disqualifying Circumstances.* An applicant seeking licensure for a Non-Gaming position is not eligible for a Certificate of Rehabilitation if the application or background investigation confirms that the applicant:

1. Is under the age of 18; or
2. Has been convicted of participating in organized crime or unlawful gambling; or
3. Has knowingly and willfully provided materially false and misleading statements or information to the Gaming Commission or has refused to respond to questions asked by the Gaming Commission specifically related to the person's eligibility to obtain or retain a license; or
5. Has been convicted of any offense related to criminal sexual conduct where the perpetrator was convicted as an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders; or
6. Where the underlying basis for the Specific Disqualifying Circumstance is based on conduct demonstrating habitual offender status, such that, within the relevant look-back period, there are two prior Certificates of Rehabilitation granted for the same underlying basis of the current Specific Disqualifying Circumstance.

6-2. An applicant for a Gaming Employee license with a Specific Disqualifying Circumstance may be approved for licensure upon the issuance of a Certificate of Rehabilitation by the Gaming Commission.

b. *Specific Disqualifying Circumstances.* An applicant seeking licensure for a Gaming position is not eligible for a Certificate of Rehabilitation if the application or background investigation confirms that the applicant:

1. Is member of the Tribal Council, the Ogema, a Judge or Appellate Judge on the Tribal Court, the Tribal Prosecutor or a Law Enforcement Officer of the Tribe.

This subsection shall not apply to members of the Tribal Council or a Tribal Ogema sitting on a Gaming Enterprise Board of Directors or any subsequent Board established by Tribal law to provide oversight to a gaming enterprise; or

2. Is under the age of 21; or

3. Has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud, or misrepresentation. The terms “fraud or misrepresentation” shall mean a criminal offense committed in Michigan or any other jurisdiction, involving theft, fraud or misrepresentation, which is a felony or would be a **felony** if committed in Michigan, and which was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the applicant's/licensee's criminal record by executive pardon, state court order, or operation of law; or

4. Is determined by the Gaming Commission to have participated in organized crime or unlawful gambling or whose prior activities, criminal records, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming; or

5. Has knowingly and willfully provided materially false and misleading statements or information to the Gaming Commission or has refused to respond to questions asked by the Gaming Commission specifically related to the person's eligibility to obtain or retain a license; or

6. Has been convicted of any offense related to sexual crimes or criminal sexual conduct where the perpetrator was convicted as an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders; or

7. Where the underlying basis for the Specific Disqualifying Circumstance is based on conduct demonstrating habitual offender status, such that, within the relevant look-back period, there are two prior Certificates of Rehabilitation granted for the same underlying basis of the current Specific Disqualifying Circumstance.

Section 7. Process after the Finding of a Specific Disqualifying Circumstance.

7-1. *Verification of Specific Disqualifying Circumstance.* Upon receipt of a completed application for licensure where a Specific Disqualifying Circumstance surfaces during the background investigation process, verification of all relevant dates and factual data sufficient to identify the character and nature of the underlying facts and circumstances with formed the basis of the Specific Disqualifying Circumstance shall be gathered.

a. Where the Specific Disqualifying Circumstance is NOT barred from rehabilitation the Background Investigator or designee shall recommend to the Gaming Commission that a Certificate of Rehabilitation be granted for that Specific Disqualifying Circumstance.

a. The Background Investigator or designee shall complete a Declaration to Support Certificate of Rehabilitation and prepare the file for Gaming Commission review and consideration.

b. Where the Specific Disqualifying Circumstance is barred from rehabilitation, the Background Investigator or designee shall recommend to the Gaming Commission that rehabilitation for that Specific Disqualifying Circumstance be denied.

- a. The Background Investigator or designee shall complete a Declaration to Deny Certificate of Rehabilitation and prepare the file for Gaming Commission review and consideration.

Section 8. Grant of Certificate of Rehabilitation.

8-1. Where the Gaming Commission grants a Certificate of Rehabilitation for a Specific Disqualifying Circumstance to a Tribal member, a Certificate of Rehabilitation will be issued immediately to the Tribal member and the Background Investigator or designee shall issue the applicable license for employment at the gaming enterprise. The following information shall be included on the Certificate of Rehabilitation:

- a. The Tribal member's and Tribal identification number; and
- b. A declaration of rehabilitation; and
- c. The license category and employment position the Tribal member for which rehabilitation was granted; and
- d. The relevant dates and factual data which identifies the character and nature of the underlying facts and circumstance which formed the basis of the Specific Disqualifying Circumstance; and
- e. A disclaimer that the Certificate of Rehabilitation is valid only for the purpose of licensure for employment with a gaming enterprise of the Little River Band of Ottawa Indians; and
- f. The signature of the Gaming Commissioners granting the Certificate of Rehabilitation.
- g. The Tribal member shall sign an Acknowledgement and Understanding of Rehabilitation form upon issuance of the Certificate of Rehabilitation and the license for employment at the gaming enterprise.

Section 9. Denial of Certificate of Rehabilitation.

9-1. Where the Gaming Commission has failed to grant a Certificate of Rehabilitation to a Tribal member with a Specific Disqualifying Circumstance and the Tribal member has been denied licensure, the Tribal member shall immediately receive a Notice of Denial of Rehabilitation and have a right to a separate Rehabilitation hearing (in lieu of a licensing hearing pursuant to the Gaming Ordinance) before the Gaming Commission within 7 days.

- a. At the Rehabilitation hearing, the Gaming Commission shall provide the Tribal member with competent, material and substantial evidence that demonstrates that the denial of the Certificate of Rehabilitation is substantiated.
- b. The Gaming Commission shall accept all evidence presented by the Tribal member to rebut the denial of the Certificate of Rehabilitation based on the Specific Disqualifying Circumstance.
- c. After hearing evidence and testimony, the Gaming Commission shall within seven (7) days set forth in writing a Notice of Disposition advising the Tribal member its determination, supported by facts supporting the determination. The Notice of Disposition shall also provide the Tribal member with notice that they have the right to appeal the Gaming Commission's adverse decision to the Tribal court.

9-2. Appeals to Tribal Court.

- a. Upon notice that a Tribal member has appealed a Gaming Commission denial of a Certificate of Rehabilitation, the Gaming Commission or designee shall immediately copy and forward the following documents to the Tribal court:
 1. The application for licensure, including all evidence and documents contained

- therein; and
 - 2. A transcript of the Rehabilitation hearing, including all evidence and documents presented by the Gaming Commission and the Tribal member; and
 - 3. The Notice of Denial of Rehabilitation; and
 - 4. The Notice of Disposition of Rehabilitation hearing.
- b. Upon notice by the Tribal court of the reversal of the Gaming Commission's decision to deny a Certificate of Rehabilitation, the Gaming Commission shall immediately cause to issue the Tribal member the appropriate Certificate of Rehabilitation and the Background Investigator shall issue the Tribal member the applicable license for employment at the gaming enterprise.